

OPERATION AND MAINTENANCE AGREEMENT
BETWEEN
THE RECLAMATION BOARD OF THE STATE OF CALIFORNIA
AND
SACRAMENTO AREA FLOOD CONTROL AGENCY
FOR
THE SACRAMENTO RIVER BANK PROTECTION PROJECT
ON THE SACRAMENTO RIVER

This agreement is entered into by and between The Reclamation Board (Board) of the State of California and the Sacramento Area Flood Control Agency (SAFCA) on this _____ day of _____, 2006 in view of the following circumstances:

1. The Sacramento River Flood Control Project (SRFCP) was authorized by Congress and approved on March 1, 1917, then amended on May 15, 1928, August 26, 1937, August 18, 1941, August 17, 1954, and July 14, 1960; and
2. The Sacramento River Bank Protection Project (SRBPP) was authorized by Congress in the Flood Control Act of 1960, Public Law (PL) 86-645; as supplemented by the River Basin Monetary Authorization Act of 1974; PL 93-251; and as supplemented by a Joint Resolution of Congress, PL 97-377; and
3. California Water Code sections 8617, 8617.1, 12648.1, and 12649.1 authorize the State, acting by and through the Board, to cooperate on the SRFCP and authorize the Board to give satisfactory assurances to the United States Department of the Army, hereinafter referred to as "the Government," that the required local cooperation will be furnished by the State in connection with the Project; and
4. The Board has agreed to serve as the nonfederal sponsor of the Project on the condition that SAFCA provides the Board with the assurances specified in this agreement that it will be responsible for operation, maintenance, repair, replacement, and rehabilitation of the Project upon its completion; and will, as described below, hold and save the Government, the State, and the Board free from all claims and damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project; and
5. The Board's obligations as nonfederal sponsor of the Project are set forth in the Local Cooperation Agreement (LCA) for this Project between the Board and the Government which was executed on December 6, 1988. A copy of the LCA is attached as Exhibit 1 and incorporated by this reference; and
6. SAFCA has agreed to provide the aforementioned assurances specified in this Agreement to the Board; and

7. SAFCA has the power and authority to do all things required in this Agreement of SAFCA.

NOW, THEREFORE, IT IS HEREBY AGREED:

SECTION I: Obligations of the Board and SAFCA

- A. For purposes of this Agreement, the term "Project" shall mean bank protection and mitigation work performed on-site and off-site by the Government on the Sacramento River (east levee) at River Miles (RM) 56.7, 53.1, 52.4, 51.5, 50.8, 50.4, 50.2, 49.9, and 49.6.
- B. The terms of this Agreement shall apply to all of the separate construction and mitigation contracts that may be awarded by the Government for this Project.
- C. SAFCA agrees to this following:
 1. To operate, maintain, repair, replace, and rehabilitate the Project, including, without limitation, slope protection features, berms, plantings, embedded woody material, and related features constructed as part of the Project in accordance with the regulations or directions prescribed by the Secretary of the Army and the Board without any cost to the State or the Board.
 2. To hold and save the Government, the State, and the Board free from all claims and damages arising from the construction, operation, maintenance, repair, replacement, or rehabilitation of the Project; except for claims or damages due to the fault or negligence of the Government or its contractors, without exception.
 3. To hold and save the State and the Board, its successors or assigns, to the extent required by State law, free and harmless from any and all claims or damages arising out of or in connection with the obligations herein assumed by SAFCA, including any responsibility for claims or damages arising out of work performed by the Government for which the State or the Board may be held liable.
- D. The Board shall give SAFCA the opportunity to review and comment on all contracts to be carried out in connection with the Project, including relevant plans and specification, prior to the issuance of invitations for bid. The Board shall also give SAFCA the opportunity to review and comment on all major modifications and change orders in connection with such contracts prior to the issuance of a Notice to Proceed to the contractor. The time allotted for plan reviews shall be within the control of the Government. The Board will consider SAFCA's

comments, but pursuant to the provisions of Article II of the LCA, all work on the Project (whether performed under contract or by Government personnel) shall be exclusively within the control of the Government.

- E. SAFCA shall inform affected interests of the extent of protection afforded by the Project.
- F. SAFCA agrees to perform operation, maintenance, repair, replacement, and rehabilitation of all Project features in a manner that does not diminish the flood protection afforded by or jeopardize the structural integrity of the Project or the SRFCP.
- G. SAFCA agrees to mitigate for any environmental impacts of work performed pursuant to Section I.C.1 of this Agreement without any costs to the State or the Board.

SECTION II: Obligations to Operate, Maintain, Repair, Replace, and Rehabilitate

- A. The term "functional portion of the Project" shall have the meaning set forth in Article I, Paragraph 6 of the LCA attached hereto as Exhibit 1. Upon completion of the Project or any functional portion thereof as determined by the Government, the Board shall turn the completed Project, including the responsibility for all required lands and rights acquired by or on behalf of the Board, over to SAFCA for operation, maintenance, repair, replacement, and rehabilitation as required by Water Code sections 8370, 2642, and 12828 and Section I.C. of this Agreement.

The turnover of this Project will be accompanied by (1) the Standard Operation and Maintenance Manual for the SRFCP and (2) the applicable Supplement to the Standard Operation and Maintenance Manual, SRFCP.

- B. SAFCA hereby gives the Government and the Board the right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the project for the purpose of inspection.
- C. If SAFCA has failed or refused to perform the obligations set forth in this Section and that failure or refusal constitutes, in the opinion of the Government or the Board, a threat to the continued ability of that functional portion of the Project to meet design specifications or the requirements of the manuals mentioned above, then the Board or Government may perform the necessary work either with their own forces or by contract. SAFCA will reimburse the Board or Government for the costs of performing that work.
- D. Initial Plant Establishment, Habitat Performance Standards, Operation, Maintenance, Repair, Replacement, and Rehabilitation of Mitigation Features.

Compensation for all significant adverse environmental impacts resulting from Project construction will be provided by incorporating mitigation features into the design of the Project. The mitigation features will be considered to be functional portion(s) of the Project. The Government's contractor will construct the mitigation features as directed by the Government to meet the mitigation requirements approved for the Project by the Board and the Government. The Government's contractor will perform initial maintenance, which includes irrigation, weed control, and plant replacement, for the time period prior to acceptance of the work by the Government. When the Government has accepted the work, the Government will turn the mitigation features over to the Board for operation, maintenance, repair, replacement, and rehabilitation.

The specific requirements of initial plant establishment and mitigation monitoring shall be specified by the Board in accordance with the standards and guidelines set forth in the environmental impact reports adopted for each Project site. Following turnover of the Project to SAFCA, SAFCA shall be responsible for complying with all mitigation monitoring requirements, meeting all mitigation performance standards, and carrying out any necessary remedial measures set forth in the environmental impact reports adopted for each Project site and the operation and maintenance manuals referenced in Section II.A of this Agreement.

E. Mitigation for Vegetation Removal to Meet Operation, Maintenance, Repair, Replacement, and Rehabilitation Requirements

In the event that vegetation is partially or completely damaged or removed by SAFCA in the course of carrying out its obligation under this Agreement, SAFCA shall mitigate for the affected vegetation in accordance with State and federal laws and without cost to the State or the Board.

SECTION III: Disputes

Before any party to the Agreement may bring suit in any court concerning an issue relating to this Agreement, that party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to all parties.

SECTION IV: Compliance with State and Federal Law

In carrying out the provisions of this Agreement, SAFCA agrees to comply with all applicable federal and State laws and regulations, including Section 601 of Title VI of 55000.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations; and Army Regulation 600-7, entitled "Non-Discrimination of the Basis of Handicapped in Programs and Activities Assisted or Conducted by the Department of the Army.

SECTION V: Obligation of Future Appropriations

The parties agree that nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California.

SECTION VI: Hazardous Substances

SAFCA acknowledges that the Board may incur certain obligations with respect to hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601-9675, on lands necessary for Project construction, operation, and maintenance. SAFCA agrees:

- A. That in the event that SAFCA discovers through an environmental investigation or other means that any lands, easements, or rights of way that have been acquired or provided for the Project contain hazardous substances regulated under CERCLA, SAFCA shall promptly notify the Board of that discovery.
- B. That in the event hazardous substances regulated under CERCLA have been found, then at the direction of the Board after consultation with SAFCA, SAFCA shall initiate and complete any and all necessary response and cleanup activity required under CERCLA, which shall include any studies and investigations necessary to determine the appropriate response to the contamination. Payment for the costs of such necessary response and cleanup activity as required under CERCLA shall be made by SAFCA. In the event that SAFCA fails to provide the funds necessary for response and cleanup activity required under CERCLA or to otherwise discharge SAFCA's responsibilities under this Paragraph B, then the Board may perform the necessary response and cleanup activity, and SAFCA will reimburse the Board thereof. If the Board performs the necessary response and cleanup activity required under CERCLA, the Board shall consult with SAFCA concerning the selection of the person(s) to perform the work, the amount of money to be spent on the work, the scope of the work, and any other aspect of response and cleanup activity.
- C. That SAFCA shall consult with the Board, and the Board shall consult with the Government in order ensure that responsible persons under CERCLA ultimately bear all necessary response and cleanup costs as defined in CERCLA.
- D. That SAFCA shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will control the intentional or negligent release or threatened release of hazardous substances regulated under CERCLA on lands necessary for Project construction, operation, or maintenance.
- E. That in the event that the Government, the State, or the Board are found to be liable under CERCLA for the release or threatened release of hazardous substances arising out of the operation, maintenance, repair, replacement, or

rehabilitation of the Project, then SAFCA shall indemnify the Government, the State, or the Board for any response or cleanup costs for which the Government, the State, or the Board are found to be liable under CERCLA, except for such response or cleanup costs which result from negligence of the Government or its contractors during construction.

- F. No decision made or action taken pursuant to any provision of this Section of the Project Maintenance Agreement shall relieve any responsible person from any liability that may arise under CERCLA, nor shall such decision or action be considered a waiver by the Board or SAFCA of any right to seek from any responsible person as defined by CERCLA the recovery or contribution of or indemnification from costs incurred by the Board or SAFCA for response or cleanup activity required under CERCLA, nor shall such decision or action be considered a waiver by the Board of any other right or remedy provided by law.
- G. As between SAFCA and the Board, SAFCA shall be considered the operator of the Project for purposes of CERCLA liability.

SECTION VII: Authorization for Delegation or Subcontracting

SAFCA may delegate or subcontract its responsibilities under this Agreement to the City of Sacramento (City), or to the County of Sacramento (County), or to Reclamation District 1000, or to the State of California, which operates Maintenance Area 9. In performing the obligations called for in this Agreement, SAFCA shall notify the Board when it initially retains, employs, or uses any agencies or firms other than the City or the County. SAFCA shall be responsible for all work to be performed under the contract, including any delegated work. The Board shall have the right to ask that any services for this Agreement provided by any subcontractor be terminated if its performance is unsatisfactory.

Payment for services rendered by subcontractors shall be made entirely by SAFCA; the Board shall have no responsibility for making any payments to the subcontractors for any services they may render in connection with this Agreement.

SECTION VIII: Term of Agreement; Amendment

The term of this agreement shall be coextensive with that of the LCA. This Agreement may be amended only upon consent of all parties.

SECTION: Notices

All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by first class (postage pre-paid), registered, or certified mail, as follows:

If to The Reclamation Board:

General Manager
The Reclamation Board
3310 El Camino Avenue, Room LL 40
Sacramento, California 95821

If to the Sacramento Area Flood Control
Agency:

Executive Director
Sacramento Area Flood Control Agency
1007 Seventh Street, Seventh Floor
Sacramento, California 95814

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this section.

Any notice, request, demand, or other communication made pursuant to this section shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

SECTION X: Separability

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which will become effective upon the date it is signed on behalf of The Reclamation Board.

THE RECLAMATION BOARD OF THE
STATE OF CALIFORNIA

SACRAMENTO AREA FLOOD
CONTROL AGENCY

By _____
Ben Carter
President

By _____
Stein M. Buer
Executive Director

Date: _____

Date: _____

Approved as to Legal Form
and Sufficiency:

Approved as to Legal Form
and Sufficiency:

Scott R. Morgan, Counsel

Timothy N. Washburn, Counsel

SCAN OF SIGNATURE SHEET

Resolution No. 05-090

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improvements located along the portions of the Sacramento River east levee that these entities are responsible for maintaining.

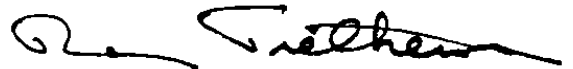
ON A MOTION BY Director Cohn, seconded by Director Moose, the foregoing resolution was passed and adopted by the Board of Directors of the Sacramento Area Flood Control Agency, this 15th day of December 2005, by the following vote, to wit:

AYES: Directors: Christophel, Cohn, Dickinson, Fargo, Keller, Macdonald, MacGlashan, Miller, Moose, Nottoli, Schmidt, Tretheway

NOES: Directors:

ABSTAIN: Directors:


ABSENT: Directors: Collin



Chair of the Board of Directors of the
Sacramento Area Flood Control Agency

(SEAL)

ATTEST:


Deputy Clerk of the Board of Directors

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Attachment(s)